

AMENDMENT NO. 2616

At the request of Mr. LIEBERMAN, the names of the Senator from Utah (Mr. HATCH) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of amendment No. 2616 proposed to H.R. 3326, a bill making appropriations for the Department of Defense for the fiscal year ending September 30, 2010, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HARKIN (for himself, Mr. LEAHY, Mr. DURBIN, Mr. SPECTER, Mr. KOHL, Mr. SCHUMER, Mr. FRANKEN, Mr. SANDERS, Mr. BROWN, Mr. CARDIN, Mr. MERKLEY, Mrs. FEINSTEIN, Mr. DODD, Mrs. BOXER, Mr. LAUTENBERG, Mr. KAUFMAN, and Mr. NELSON of Florida):

S. 1756. A bill to amend the Age Discrimination in Employment Act of 1967 to clarify the appropriate standard of proof; to the Committee on Health, Education, Labor, and Pensions.

Mr. LEAHY. Mr. President, today, I am pleased to join Senator HARKIN and other Senators to introduce the Protecting Older Workers Against Discrimination Act. This legislation overturns the Supreme Court's recent decision in *Gross v. FBL Financial Services*, a divided case that thwarted congressional intent, overturned well-established precedent, and delivered a major blow to the ability of older workers to fight age discrimination. This bill restores the intent of Congress to fully empower older workers to seek redress in the courts, and to root out discrimination in the workplace.

I thank Senator HARKIN for introducing this bill, and I commend him for his commitment and dedication over the years to ensure that the promise of equal opportunity is real for all Americans. We worked hard last year to enact into law the ADA Amendments Act, which clarified and expanded protections for Americans with disabilities. I am proud to once again join as an original cosponsor of legislation that will do the same for older workers. I am also pleased that Congressman GEORGE MILLER will introduce a companion bill in the House today as well.

This Nation was founded on the promise of equal rights and equal opportunity for all Americans. To fulfill this promise, Congress has enacted a full slate of civil rights laws to eliminate discrimination in society, including the workplace. In 1967, Congress passed the Age Discrimination and Employment Act, ADEA, with the intent to extend protections against workplace discrimination to older workers. We strengthened those protections in the Civil Rights Act of 1991, which the Senate passed by a vote of 93 to 5.

Last month, Senators from both sides of the aisle joined together to celebrate the life and accomplishments of

Senator Ted Kennedy, whose legacy includes authoring and shepherding these civil rights measures into law. As Senator Kennedy said, "It has long been clear that effective enforcement of civil rights and fair labor practices is possible only if individuals themselves are able to seek relief in court."

However, contrary to the intent of Congress, the Supreme Court's decision in *Gross* will make it more difficult for older workers victimized by age discrimination to seek relief in court, and more difficult for those victims who actually get their day in court to vindicate their rights.

In passing the ADEA, Congress aimed to eliminate all forms of age discrimination in the workplace. Consistent with this goal, courts have for decades interpreted the ADEA to lessen the burdens on older workers victimized by discrimination. Victims of age discrimination were only required to show that age was a "motivating factor" for an employer's adverse action, though other factors may have also motivated a company's firing or termination of an employee.

In *Gross*, however, the Supreme Court misinterpreted the intent of Congress and ignored the longstanding precedent in a way that resulted in weakening core civil rights protections for older workers. In a 5-4 decision, a majority of the Court concluded that under the ADEA an employee must now prove that age was the sole cause of an employer's adverse action. As a result, despite our intent to provide the same protections for older workers in the ADEA as we provided for racial minorities in Title VII of the Civil Rights Act of 1964, today older workers now have less protection against workplace discrimination.

I am concerned that the *Gross* decision will allow employers to discriminate on the basis of age with impunity as long as it is paired with other reasons. Older workers, who make up nearly 50 percent of the American workforce, are particularly vulnerable to suffering discrimination during difficult economic times. In fact, age discrimination complaints filed with the Equal Employment Opportunity Commission jumped nearly 30 percent between 2007 and 2008. I fear that in the wake of *Gross* few, if any, of these victims will attain justice.

The Protecting Older Workers Against Discrimination Act, which is modeled on the Civil Rights Act of 1991, would reverse the *Gross* decision, strengthen the safeguards of the ADEA, and restore fundamental fairness. The bill eliminates the high burden of proof that victims of age discrimination must meet after *Gross*. It clarifies that the standard for proving discrimination under the ADEA and other anti-discrimination and anti-retaliation laws is the same as the standard for proving race discrimination under Title VII. The bill makes clear that when a litigant shows that age was a motivating factor for an adverse

employment action, the burden is on the employer to prove it complied with the law. This bill restores the law to what it was for decades before the Court rewrote the rule.

The bill also ensures that all workers will be treated equally in the workplace. Today, some lower courts have already applied *Gross* to weaken the protections in other anti-discrimination statutes. The legislation clarifies that the "motivating factor" standard applies to all anti-discrimination and anti-retaliation laws, and reflects a broader commitment to address the needs of all persons who suffer discrimination. It reaffirms that Americans' rights will be honored. It also restores the faith of the public that our civil rights laws are just and fair. Those are timeless American values that we can all embrace.

We have drafted this measure after long and thoughtful consideration with the Leadership Conference on Civil Rights, a broad coalition of hundreds of civil rights and workers' rights organizations. The bill also has the support of AARP, the National Senior Citizens Law Center, the National Women's Law Center and the National Employment Lawyers Association. Their support gives me confidence that this legislation will improve the lives of all Americans.

Time has shown that the ADEA has been one of our Nation's most effective tools in combating discrimination. Its continued effectiveness is important to ensure that the great progress we have made in widening the doors of opportunity for all Americans continues in the future. The Protecting Older Workers Against Discrimination Act will restore vital protections that have long secured the promise of equal rights and equal opportunity for older workers. I hope all Senators will support passing this critical civil rights measure this year.

#### SUBMITTED RESOLUTIONS

SENATE RESOLUTION 303—EXPRESSING THE SENSE OF THE SENATE THAT OCTOBER 17, 1984, THE DATE OF THE RESTORATION BY THE FEDERAL GOVERNMENT OF FEDERAL RECOGNITION TO THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS, SHOULD BE MEMORIALIZED

Mr. WYDEN (for himself and Mr. MERKLEY) submitted the following resolution; which was referred to the Committee on Indian Affairs:

S. RES. 303

Whereas the Coos, Lower Umpqua, and Siuslaw Restoration Act (25 U.S.C. 714 et seq.), which was signed by President Ronald Reagan on October 17, 1984, restored Federal recognition to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians;

Whereas the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians historically inhabited land now in the State of Oregon, from Fivemile Point in the south to